

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

This matter is before the Court on Defendants Nye County, Sheree Stringer, Debbie Orrick, Brian Kunzi, and Marla Zlotek's Motion for Attorney's Fees (ECF No. 75), filed on February 21, 2017. Plaintiff filed its omnibus Response (ECF No. 88) on March 10, 2017. Defendants filed their Reply (ECF No. 91) on March 17, 2017. On July 27, 2017, the Court instructed the parties to file supplements to their motions attaching any state court award of attorney's fees and costs. *See* ECF No. 96. Plaintiff filed its Supplement (ECF No. 98) on July 28, 2017. Defendants filed their Supplement (ECF No. 101) on August 8, 2017.

BACKGROUND

This case arises from the disputed ownership of a parcel of real property in Nye County, Nevada, known as parcel number APN-106-06. Plaintiff alleges he was the titled legal owner of the property and that Defendants conspired to transfer the title of the property without consulting Plaintiff. *See* ECF No. 1. Plaintiff filed his Complaint (ECF No. 1) on December 4, 2015, and subsequently, filed an identical Complaint in the Fifth Judicial District Court, Nye County, Nevada, alleging the following: (1) violation of civil rights; (2) forgery of conveyance; (3) uttering a forged instrument; (4) conversion; (5) civil conspiracy; (6) civil racketeering; and (7) respondeat superior.

1 Defendants filed special Motions to Dismiss pursuant to Nevada's anti-Strategic Lawsuits Against
2 Public Participation ("SLAPP") statute, NRS § 41.650, *et seq.* ECF No. 51.

3 In May 2016, the Fifth Judicial District Court dismissed Plaintiff's claims with
4 prejudice. On May 4, 2016, Plaintiff voluntarily dismissed Defendants Nye County, Stringer, Orrick,
5 Kunzi, and Zlotek from the state court case. On September 29, 2016, Defendants Brust, Lithium
6 Corporation, Summa, LLC, Henry Tonking, Greg Ekins, and GIS Land Services filed Supplements to
7 their motions to dismiss attaching the state court order dismissing Plaintiff's claims with prejudice,
8 and requested that the Court take judicial notice of the fact that identical claims were dismissed in
9 another court. *See* ECF Nos. 60, 61, 62. On February 7, 2017, the Court granted Defendants' special
10 Motion to Dismiss, entered judgment, and dismissed Plaintiff's claims with prejudice as being barred
11 by the doctrine of res judicata. ECF Nos. 67, 68.

12 Defendants argue that NRS 41.670(1) provides that the Court shall award reasonable
13 attorney's fees and costs upon the grant of a special motion to dismiss under NRS § 41.660. *See*
14 *Motion for Attorney's Fees* (ECF No. 75), pg. 8. Plaintiff argues that Defendants were dismissed
15 from the state court proceedings and Plaintiff's claims in this court were dismissed based on res
16 judicata and, therefore, Defendants are not entitled to an award of attorney's fees under NRS §
17 41.670. *Response* (ECF No. 88), pg. 3.

18 **DISCUSSION**

19 **A. Application for Attorney's Fees**

20 In an action involving state law claims, district courts apply the law of the forum state to
21 determine whether a party is entitled to attorneys' fees, unless it conflicts with a valid federal statute
22 or procedural rule. *Jiangmen Kinwai Furniture Decoration Co. Ltd v. Int'l Mkt. Centers, Inc.*, 2016
23 WL 6637699, at *2 (D. Nev. Nov. 8, 2016) (citing *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197
24 F.3d 1276, 1282 (9th Cir. 1999)). Under Nevada law, attorney's fees are available only when
25 "authorized by rule, statute, or contract." *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69,
26 73 (Nev. 1994); Nev. Rev. Stat. § 18.010.

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1 N.R.S. § 41.670 states as follows:

2 If the court grants a special motion to dismiss pursuant to NRS 41.660:
3 (a) The court shall award reasonable costs and attorney's fees to the person against
whom the action was brought. . .

4 Nev. Rev. Stat. Ann. § 41.670(1)(a).

5 In *Rebel Communications, LLC v. Virgin Valley Water Dist.*, No. 2:10-CV-0513-LRH-GWF,
6 2012 WL 5839048, (D. Nev. Nov. 16, 2012), the Court granted the defendant's renewed special
7 motion to dismiss and found that the defendants were entitled to reasonable attorney's fees under
8 Nevada's Anti-SLAPP statute. The Court, however, found that in the circumstances of the case, the
9 scope of work for an award of attorneys' fees should be specifically limited to work respecting the
10 renewed special motion to dismiss and related discovery. *Id.* at *1. The Court found that the
11 defendant's first special motion to dismiss was not granted within the meaning of Nevada's Anti-
12 SLAPP statute because it was granted on other grounds. *Id.*

13 On February 6, 2017, the Court granted Defendants' Motions to Dismiss, found that
14 Plaintiff's claims were barred by the doctrines of res judicata and claim preclusion, and dismissed
15 Plaintiff's complaint with prejudice. *See* ECF No. 67. The claims in the state action are all derived
16 from the same set of facts, the same documents, and the same state proceedings as the instant action.
17 *Id.* at pg. 5. Because the Court found that the final judgment in the state action was a valid decision
18 on the merits, Defendant's special motions to dismiss were granted within the meaning of Nevada's
19 Anti-SLAPP statute. The Court, therefore, finds that Defendants are entitled to reasonable attorney's
20 fees pursuant to N.R.S. § 41.670(1). An award of attorney's fees should, however, be limited to work
21 performed regarding the issues of res judicata and claim preclusion as well as issues related to federal
22 law.

23 The Supreme Court has held that reasonable attorney fees must "be calculated according to
24 the prevailing market rates in the relevant community," considering the fees charged by "lawyers of
25 reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.
26 11, 104 S.Ct. 1541 (1984). Courts typically use a two-step process when determining fee awards.
27 *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court must calculate the
28 lodestar amount "by taking the number of hours reasonably expended on the litigation and

1 multiplying it by a reasonable hourly rate.” *Id.* Furthermore, other factors should be taken into
2 consideration such as special skill, experience of counsel, and the results obtained. *Morales v. City of*
3 *San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). “The party seeking an award of fees should submit
4 evidence supporting the hours worked and rates claimed . . . [w]here the documentation of hours is
5 inadequate, the district court may reduce the award accordingly.” *Hensley v. Eckerhart*, 461 U.S.
6 424, 433 (1983). Second, the Court “may adjust the lodestar, [only on rare and exceptional
7 occasions], upward or downward using a multiplier based on factors not subsumed in the initial
8 calculation of the lodestar.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir.
9 2000).

10 Defendants seek \$15,675 in attorney’s fees based on 95 hours of work performed by Chad
11 Clement, Esq., Craig Anderson, Esq., and Christian Balducci, Esq. at an hourly rate of \$165.00,
12 \$1,044.91 in costs, and sanctions in the amount of \$10,000 for each Defendant. Plaintiffs voluntarily
13 dismissed Defendants from the state court matter and Defendants did not file an application for
14 attorney’s fees in the state court proceedings. *See* ECF No. 101. Although Defendants were
15 voluntarily dismissed, they filed special motions to dismiss in the state court proceedings. After
16 reviewing Defendants’ counsel’s affidavits and itemized billing records, the Court finds that 95 hours
17 in attorney labor should be reduced to 17.5 hours. The awarded hours represent work performed on
18 Defendants’ special motions to dismiss and research regarding federal law. The Court further
19 reduced the awarded hours to a reasonable amount based upon the similarity and duplication of work
20 performed in the state proceedings. Court finds that 17.5 hours in attorney labor to conduct research
21 and draft the special motions to dismiss is reasonable. As a result, the Court will award Defendants
22 reasonable attorney’s fees in the amount of \$2,887.50.

23 **B. Request for Sanctions**

24 Defendants also request sanctions in the amount of \$10,000 for each Defendant pursuant to
25 N.R.S. § 41.670 on the grounds that Plaintiff’s action is frivolous. Under NRS 41.670, “the Court
26 may award, in addition to reasonable costs and attorney’s fees. . . , an amount of up to \$10,000 to the
27 person against whom the action was brought.” Nev. Rev. Stat. 41.670(b). “A complaint, containing
28 as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis

1 either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831–32 (1989).
2 The Court dismissed this action on the grounds of res judicata. It did not find Plaintiff's claims to be
3 frivolous. Defendants have not set forth a sufficient basis to warrant an award of \$10,000 to each
4 Defendant under N.R.S. § 41.670. The Court, therefore, denies Defendants' request for sanctions.
5 Accordingly,

6 **RECOMMENDATION**

7 **IT IS HEREBY RECOMMENDED** that Defendants' Motion for Attorney's Fees (ECF No.
8 75) be **granted**, in part, and **denied**, in part. Plaintiff shall pay the total sum of \$2,887.50 and is
9 ordered to make the payment to Defendants by **October 2, 2017**. It is further recommended that
10 Defendants' request for sanctions be **denied**.

11 **NOTICE**

12 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
13 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
14 that the courts of appeal may determine that an appeal has been waived due to the failure to file
15 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
16 held that (1) failure to file objections within the specified time and (2) failure to properly address and
17 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
18 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
19 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

20 DATED this 30th day of August, 2017.

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23 GEORGE FOLEY, JR.
24 United States Magistrate Judge
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